

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE AIR CARGO SHIPPING
SERVICES ANTITRUST LITIGATION

MDL No. 1775

Master File 06-MD-1775 (JG) (VVP)

DEFENDANT AIR NEW ZEALAND LTD.'S
MOTION TO AMEND THE FIFTH STIPULATED REVISED DISCOVERY
AND CLASS CERTIFICATION BRIEFING SCHEDULE

COMES NOW, Defendant Air New Zealand Ltd. ("Air NZ"), by and through counsel, and respectfully moves this Court to amend the Fifth Stipulated Revised Discovery and Class Certification Briefing Schedule to allow the deposition of non-party, Bruce McCaffrey, to occur no later than February 28, 2014, on a date mutually convenient for the witness and his attorney.

In support of this Motion, Air NZ states:

1. The Fifth Stipulated Revised Discovery and Class Certification Briefing Schedule set December 31, 2013, as the deadline for the close of fact discovery. *See* Docket No. 1816.
2. Beginning in July of 2013, Air NZ attempted on various occasions to contact attorney Jeffrey A. Udell to determine whether he still represented Mr. McCaffrey.¹
3. On September 4, 2013, Mr. Udell confirmed that he represented Mr. McCaffrey and was asked if he was authorized to accept service of a Notice of Deposition on behalf of his client.
4. On September 17, 2013, Mr. Udell stated that he was not authorized to accept service of a Notice of Deposition for Mr. McCaffrey.

¹ Mr. Udell had represented Mr. McCaffrey in connection with the investigation by the U.S. Department of Justice.

5. On October 4, 2013, Air NZ engaged an investigative firm to locate and serve Mr. McCaffrey with a Notice of Deposition.
6. On October 23, 2013, the investigative firm located Mr. McCaffrey in Sarasota, Florida.
7. On October 29, 2013, counsel for Air NZ sent to the investigative firm a subpoena for Mr. McCaffrey to appear and attend a deposition scheduled for December 10, 2013.² *See* Ex. A.
8. On October 29, 2013, Air NZ also attempted to serve Mr. McCaffrey with the subpoena to appear for a deposition on December 10, 2013, via Federal Express.
9. On November 25, Air NZ was notified that Federal Express could not deliver the package containing the subpoena to Mr. McCaffrey. The package was sent back to counsel for Air NZ. *See* Ex. B.
10. From late October through mid-November, the investigative firm made numerous attempts to serve Mr. McCaffrey with the notice and subpoena for the deposition. Mr. McCaffrey lived in a secure complex which was monitored by a front desk receptionist who denied the investigative firm access to Mr. McCaffrey's floor.
11. On November 15, 2013, the investigative firm gained access to Mr. McCaffrey's floor, but learned that Mr. McCaffrey had recently vacated the residence without leaving a forwarding address.
12. On November 19, 2013, Air NZ learned that Mr. McCaffrey was probably residing in Bradenton, Florida. The investigative firm made attempts to serve Mr. McCaffrey there.

² This date was chosen for various reasons including giving adequate notice to all parties and an attempt to avoid conflict with previously noticed depositions.

13. In conjunction with the investigator's efforts, Air NZ also tried to serve Mr. McCaffrey with the subpoena to appear for deposition by Federal Express to an address in University Park, Florida.
14. The Federal Express package was returned on December 3, 2013 as being unable to deliver. *See* Ex. C.
15. On November 20, 2013, Air NZ was informed that the investigative firm was unsuccessful in serving Mr. McCaffrey.
16. On November 21, 2013, Air NZ issued a new subpoena for the deposition of Mr. to be held on December 19, 2013. *See* Ex. D.
17. On December 2, 2013, Air NZ was informed by the investigative firm that Mr. McCaffrey was actively evading service.
18. On December 4, 2013, Air NZ issued yet another new subpoena for Mr. McCaffrey to appear for a deposition on December 30, 2013. *See* Ex. E.
19. Mr. McCaffrey was successfully served with the subpoena and notice of deposition on December 7, 2013 in Bradenton, Florida.³
20. After receiving receipt of confirmation of service on Mr. McCaffrey from the investigative firm, Air NZ served the Notice of Deposition on all parties on December 9, 2013.
21. On December 10, 2013, Air NZ contacted Mr. Udell, who light-heartedly asked "What took you guys so long?," when informed that his client had been successfully served.

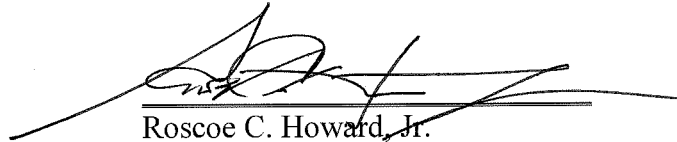
³ Upon service, Mr. McCaffrey initially denied his true identity when asked by the investigative firm.

22. Air NZ was informed that Mr. McCaffrey had dialysis treatments on Mondays and Wednesdays of each week; therefore, he could not attend the scheduled deposition on Monday, December 30, 2013.
23. On December 13, 2013, Air NZ learned that the venue previously reserved (with a deposit) for the deposition, had no availability until the week of January 20, 2014.
24. On December 16, 2013, Air NZ advised plaintiffs' counsel Keith Verrier Esquire that Mr. McCaffrey's deposition would need to be rescheduled due to his medical appointments.
25. Air NZ proposed to Mr. Verrier January 23, 2014 (which Mr. Udell stated was a satisfactory date) as a new date for the deposition. Air NZ asked plaintiffs if they would agree to a limited extension of the discovery deadline for Mr. McCaffrey's deposition.
26. On December 19, 2013, counsel for Air NZ received a letter from the plaintiffs' counsel stating that they would only agree to extend the discovery deadline if Mr. McCaffrey's deposition was held on a mutually convenient date prior to January 23, 2014. See Ex. F. Plaintiffs' counsel have not indicated a conflict on January 23, 2014 or given any other explanation.
27. Due to the holiday schedule, the unavailability of the deposition venue, Mr. McCaffrey's availability⁴, Mr. Udell's availability and Air NZ's counsels' other commitments on this matter, Air NZ cannot agree to take the deposition of Mr. McCaffrey before January 23, 2013.
28. In advance of the upcoming holidays and so as to avoid violating this Court's order regarding the close of discovery, Air NZ now seeks relief from the Court.

⁴ Mr. Udell has confirmed that January 23, 2014, is a date that suits his calendar and is a date on which Mr. McCaffrey generally does not have medical appointments. However, he has not yet responded to Air NZ's attempts to confirm the date with his client.

Air NZ used reasonable diligence and effort to secure the deposition of Mr. McCaffrey well before December 31, 2013. For the above stated reasons, and without the fault of Air NZ, the deposition could not be scheduled by that date. Air NZ, therefore, respectfully moves this Court to amend the Fifth Stipulated Revised Discovery and Class Certification Briefing Schedule to allow Air NZ to take the deposition of Mr. McCaffrey no later than February 28, 2014.

Dated: December 20, 2013.



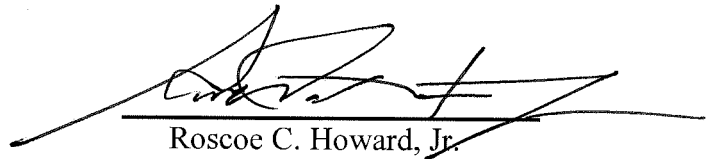
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CERTIFICATION

I, Roscoe C. Howard, Jr., counsel for Air New Zealand Ltd. in the above-captioned case, declare under penalty of perjury, that I have reviewed the foregoing Motion to Amend, that the Motion to Amend is based upon my understanding, as well as information provided by others, and that to the best of my knowledge, information, and belief, the Motion to Amend contains true and accurate information. In addition, I certify that Air New Zealand, through counsel, has attempted in good faith to consult with the parties affected by its Motion to Amend.

Executed on December 20, 2013.



Roscoe C. Howard, Jr.

CERTIFICATE OF SERVICE

I, Roscoe C. Howard, Jr., hereby certify that on December 20, 2013, a true and correct copy of *Defendant Air New Zealand's Motion to Amend the Fifth Stipulated Revised Discovery and Class Certification Briefing Schedule* was served on the following:

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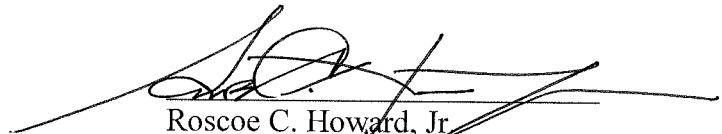
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